

STATE OF ILLINOIS)
)SS BEFORE THE ILLINOIS WORKERS'
COUNTY OF COOK) COMPENSATION COMMISSION

Frederick Williams,)
) No. 11WC 46390
) 14IWCC0576
Petitioner,)
vs.)
)
Flexible Staffing, Inc.,)
) Respondent,

ORDER

This matter comes before the Commission on its own Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated July 16, 2014, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Charles J. DeVriendt.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision shall be issued simultaneously with this Order.



Charles J. DeVriendt

DATED: JUL 22 2014

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frederick Williams,

Petitioner,

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NO: 11WC 46390
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Flexible Staffing, Inc.,

Respondent,

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County with instructions "to the Commission for clarification of which facts/evidence support its conclusion." The Arbitrator's decision, dated November 20, 2012, awarded Petitioner 75.9 weeks of permanent partial disability for the 30% loss of use of his right arm. On May 29, 2013, the Commission reduced the award to 25% loss of use of the right arm. On remand, the Commission makes the following clarifications to support its conclusion, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator.

We understand Respondent's argument that Dr. Levin's A.M.A. impairment rating of 6% of the upper extremity was not given enough weight by the Arbitrator. However, we do not agree with the great weight that Respondent wants placed on this rating because to do so would be to disregard the other factors and give them no weight at all. Section 8.1b of the Act requires the consideration of five factors in determining permanent partial disability:

- 1) Reported level of impairment;
- 2) Occupation;
- 3) Age at time of injury;
- 4) Future earning capacity;
- 5) Evidence of disability corroborated by treating medical records.

Section 8.1b also states, "No single factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the

level of impairment as reported by the physician must be explained in a written order.” We initially note that the term “impairment” in relation to the A.M.A. rating is not synonymous with the term “disability” as it relates to the ultimate permanent partial disability award.

Regarding the second factor, we find that Petitioner was employed in a physically demanding occupation. His un rebutted testimony was that he was a welder/fabricator and that he considered it a “physically demanding job.” (T.8). We find that Petitioner’s upper extremity impairment is more significant for a person with Petitioner’s heavier job duties than someone with a lighter-duty job and that this supports a finding of increased disability compared to the impairment rating.

Regarding the third factor, we find that Petitioner was only 45 years old and will live longer with his disability than someone who is older. We find that this warrants an increase in the level of disability in this case.

Regarding future earning capacity, Petitioner testified that he was released to full duty by Dr. Aribindi on March 8, 2012, even though he was still feeling pain and was lacking range of motion in his arm. Despite this full duty release, Petitioner’s un rebutted testimony was that, when he took the release form to Respondent the next day, he was told that he no longer had a job there. Petitioner testified that he has been looking for employment as a welder, which is what he has done for the majority of his professional life. Petitioner testified that he tries to do welding work on the side from his garage, but that he still finds it difficult to do. We find that Petitioner’s future earning capacity has been diminished and his upper extremity impairment makes him more prone to future injury with an associated loss of income.

As for the fifth factor, evidence of disability corroborated by treating medical records, Petitioner testified that he is right-hand dominant. Petitioner testified that he still has 4 or 5 out of 10 pain, which is consistent with what is reported in his last physical therapy record on February 29, 2012. On March 7, 2012, when Dr. Aribindi released Petitioner to return to work, the assessment still included “elbow pain.” Petitioner testified that his primary care doctor, Dr. Ahmed, has prescribed Norco, which he takes three times a week. However, the Commission notes that Dr. Ahmed’s records are not in evidence so there is no corroborating medical record for Petitioner’s use of Norco for his arm pain. Petitioner testified that he still does not have full range of motion and he has difficulty welding in certain positions. This is corroborated by the March 7th record of Dr. Aribindi who noted that Petitioner had “almost” full extension of the right elbow but lacked full supination of the right forearm. On May 8, 2012, Dr. Levin reported that Petitioner’s elbow lacked 3 degrees of full extension. He lacked 15 degrees of pronation and 15 degrees of supination. His right wrist had 75 degrees of flexion compared to 80 degrees on the left. His extension was 85 degrees on the right and 90 degrees on the left. His ulnar deviation on the right was 30 degrees while it was 45 degrees on the left. His mid-forearm circumference measured 26 cm on the right compared to 26.5 cm on the left. We find that these medical records support Petitioner’s disability of decreased range of motion. Petitioner testified that he still has numbness in the area of the incision and has tingling sensations in his arm and fingertips. Although Dr. Aribindi reported that Petitioner denied numbness or paresthesias, Dr. Levin noted that Petitioner had decreased pinprick sensation over the ulnar aspect of the right elbow.

Based on the above, the Commission finds that the 6% impairment rating by Dr. Levin does not adequately represent Petitioner’s actual disability in this case. When considering the other four factors, we find that Petitioner’s permanent partial disability is 25% loss of use of the right arm. The Commission modifies the Arbitrator’s Decision, to decrease Petitioner’s partial

disability award from 30% to 25% loss of use of the right arm pursuant to Section 8(e) of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$435.27 per week for a period of 23.14 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$391.75 per week for a period of 63.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the petitioner a 25% loss of use of his right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

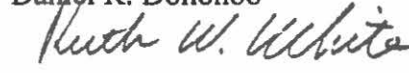
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$24,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 22 2014


Charles J. DeFriendt


Daniel R. Donohoo


Ruth White

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O: 6/24/14
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